

TYRONE P. JAMES V. YORK COUNTY POLICE DEPARTMENT, ET. AL.,

CASE ACTION NO. 01:01-CV-1015

EXHIBIT "4"

1 Look at all of you, and what I see is
2 a collection of people with varying experiences and
3 backgrounds, and so that tells me that you have all
4 lived life, and you all have common sense.

5 Please do not leave it at home. Bring
6 your common sense to bear when you hear this case as
7 well.

8 Now, the Commonwealth has said to you
9 that theory of their case is my client had these
10 mailbox business he said, a mail order drug business he
11 called it, and he says that he is going to present
12 witnesses to tell you why this was so.

13 But as you sit here, the first thing I
14 ask you to focus on which he has placed is that box,
15 and miraculously that box is a box that he said to you
16 never had any drugs in it, but he doesn't have next to
17 it a box that was sent that had drugs in it that would
18 tell you that these boxes had some sort of comparison.
19 You don't see that box. I suggest you probably
20 wouldn't see it.

21 Understand something as well, that it is
22 important to listen to all of the witnesses and not
23 only what they say when they answer the District
24 Attorney, which would be direct examination, but pay
25 also close attention to the answers they give when I

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1 to be fair and impartial, at the end of the case, at
2 the conclusion of testimony that is, you will all come
3 to the unmistakable conclusion that my client is not
4 guilty.

5 Thank you.

6 ATTORNEY SINNETT: Call Agent Morgan.

* * *

8 JAMES MORGAN,
9 called as a witness on behalf of the Commonwealth,
10 having been duly sworn according to law,
11 testified as follows:

* * *

13 DIRECT EXAMINATION

14 BY ATTORNEY SINNETT:

15 Q. Sir, can you give us your full name and tell
16 us how you are employed?

17 A. James H. Morgan, narcotics agent,
18 Pennsylvania Office of Attorney General, Bureau of
19 Narcotics Investigations and Drug Control.

20 Q. And how long have you worked there?

21 A. Eleven years.

22 Q. Prior to working with the Office of Attorney
23 General, where did you work?

24 A. Five years with the York City Police
25 Department as a patrolman.

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1 ask them questions, which is cross examination. Listen
2 for any inconsistencies. After all, if you are to
3 believe what's being said, this whole thing was staged,
4 and if it was, then you really should have no
5 inconsistencies, because you set the stage. It is a
6 play, you wrote it, so listen carefully for that.

7 Listen also to whether or not there is a
8 ring of truth to what's being said from the witness
9 stand. Do you believe what you are hearing? Does it
10 make sense? It is important that you listen to that.

11 Now, the District Attorney told you that
12 this is not a mere coincidence that all these drugs
13 came to my client in all but two days or three days
14 with drugs in these Mailbox Etc. boxes.

15 He has not told you who put the drugs
16 there. He hasn't told you that my client told him
17 anything about drugs coming there. He told you about
18 one incident that my client went to a location and
19 picked up a box. That box had no drugs in it.

20 Pay careful attention as the case
21 unfolds. You were asked by the Judge to keep an open
22 mind. Do not make your mind up until all of the
23 evidence is concluded.

24 I submit to you that if you do that, if
25 you keep an open mind, if you keep true to your promise

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1 Q. Now, specifically, with the Office of
2 Attorney General where you indicate you work now, what
3 are your responsibilities or duties, if you will?

4 A. I'm responsible for the enforcement,
5 investigation of the Drug Act, Act 64, in the
6 Commonwealth of Pennsylvania.

7 Q. And is that precisely what you do?

8 I mean, are you a patrol officer or anything
9 like that?

10 A. No, strictly on narcotics investigations.

11 Q. And you work in and around the York County
12 area?

13 A. That's correct.

14 Q. How long have you been around York County?

15 A. Fifteen years.

16 Q. Now, specifically did you become involved in
17 a case in which the Defendant, Tyrone James, was being
18 investigated?

19 A. Yes, I did.

20 Q. And how did you become involved in that case?

21 A. I received a call late night on I believe it
22 was the 8th of January of this year from an
23 investigator in California -- no, from an agent from
24 our Allentown office who relayed some information to me
25 from California.

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Q. Okay.

And basically what did you do as a result of that information that you received?

A. I was given the name and number of an investigator in California.

* * *

ATTORNEY NERO: I would object.

THE COURT: Basis?

ATTORNEY NERO: Basis is what was said to him, what was given to him.

ATTORNEY SINNETT: Your Honor, we are offering it not for the truth, but to explain his course of conduct. I am not getting into specifics of the information.

THE COURT: He received some information, and as a result, he did something. Let's pick it up where he did something.

* * *

BY ATTORNEY SINNETT:

Q. What did you do as a result of the information you received?

A. Made a phone call to the number that was supplied to me and spoke with an investigator in California, who at the time that I called gave me a brief --

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California, and I then took that information and contacted officers from Springettsbury Township to find that particular location.

Q. Now, specifically the information you got from out in California, was it involving a package or something, or what was the --

A. Yes. It was involving a parcel that was intercepted by --

* * *

ATTORNEY NERO: I object.

THE COURT: That's sustained.

* * *

BY ATTORNEY SINNETT:

Q. Then, Agent Morgan, after you received the information from him, what did you do in reference to this investigation?

A. I confirmed the address to where the parcel was to arrive.

The next morning, I contacted agents from my office and Detective Kessler and Detective Peddicord from the York County Drug Task Force.

Q. Specifically, you indicated you tried to verify an address that was given to you?

A. That's correct.

Q. Where did that address come back to?

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ATTORNEY NERO: Objection, hearsay as well.

ATTORNEY SINNETT: Well, Your Honor, first response to that is it is not necessarily hearsay. It is not an out-of-court statement because he was here and testified to it previously.

THE COURT: He is not here now.

ATTORNEY SINNETT: Second, we are not using it to explain the course -- only to explain the course, not for the truth necessarily.

I think the jury needs to have some kind of background why Agent Morgan did what he did.

THE COURT: Well, we will give you a little leeway, Mr. Sinnett.

Overruled at this point.

* * *

BY ATTORNEY SINNETT:

Q. Agent Morgan, basically tell us what the sum of the information was you received and what you did as a result of receiving that information.

A. Well, after talking to him briefly and because he was busy, he stated that he would call me back later, which he did, supplied me with an address that a particular package was to be en route from

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A. Mailbox Etc.s on Eastern Boulevard in Springettsbury Township.

Q. And specifically was there an individual address at Mailboxes Etc. or --

A. Yeah. It was listed as Suite 164. It was determined that it was Box 164.

Q. And what did you do after you found that location?

A. Myself and Detective Kessler and Detective Peddicord responded to United Parcels in York and met with the manager there at United Parcels and were permitted to put together a fake parcel containing rock salt.

Q. And what did you do after you made contact with that manager? What was the plan?

A. We were going to put together this fake parcel with the receiving address being Eastern Boulevard address.

We were going to put the parcel together and have it delivered to that particular Mailbox Etc. and have it sit there waiting the arrival of the individual who was going to retrieve it.

Q. And did you, in fact, do that?

A. Yes, we did.

Q. And when did you first take the parcel to

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1 Mailboxes Etc.?

2 A. On the 9th.

3 Q. Of January?

4 A. Yes.

5 Q. And what happened when you took it there on
6 the 9th of January?

7 A. We met with the driver of the UPS truck in
8 the parking lot of the shopping center, gave the parcel
9 to him, and he drove up and delivered the parcel as he
10 would any other parcel.

11 Q. And what happened after that?

12 A. I then entered the establishment, saw that *UPS never delivered*
13 the package was signed in, and began to check records
14 for that particular mailbox. *never sign in package on Jan 9, 2001*

15 Q. How did you come and check the records? Did
16 you ask to see them or --

17 A. Yes, I spoke with one of the sales clerks.

18 * * *

19 (Whereupon, documents were produced and
20 marked for identification as Commonwealth's Exhibit No.
21 1.)

22 * * *

23 ATTORNEY SINNETT: May I approach the
24 witness, Your Honor?

25 THE COURT: You may.
85

1 looks like about a four-page rental agreement, is that
2 accurate, or three-page, and then copies of some
3 identification that were used?

4 A. That's correct.

5 Q. And then also included with that, what are
6 some of the other documents you were given?

7 A. There is a document here that has Expressions
8 Express, Reality Fashions Express, A. S. Fashion, and
9 looks like J. B. S. Supplies, and there is a photocopy
10 of a California driver's license and photocopy of a
11 Triple A plus automobile club card, and then a series
12 of records.

13 * * *

14 ATTORNEY NERO: Your Honor, those --
15 what he is about to get into will be objected to.

16 THE COURT: The basis being?

17 ATTORNEY NERO: The basis being there is
18 no relevance at this point.

19 This is something that has nothing to do
20 with January 9th, 10th, 11th, something that occurred a
21 year ago.

22 We are not talk about a contractual
23 arrangement. He is talking about a series of
24 arrangements that do not have just information
25 concerning Mailbox Etc., but a whole list of different

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1 BY ATTORNEY SINNETT:

2 Q. Agent Morgan, I want to show you what's
3 marked collectively as Commonwealth's Exhibit 1 for
4 identification purposes.

5 First look at that and tell me if you
6 recognize that.

7 A. Yes.

8 Q. And what is that?

9 A. This is a contract agreement entered into by
10 Tyrone James and Mailbox Etc.s.

11 Q. And that was provided to you by somebody at
12 Mailboxes Etc.?

13 A. That's correct.

14 Q. And that's for the Eastern Boulevard
15 location?

16 A. Yes.

17 Q. And who does that identify as the person
18 taking out the contract?

19 A. Tyrone James.

20 Q. And what does it list as the business or
21 reason for the leasing of the rental space or of the
22 mailbox space, I should say?

23 A. Reality Fashions Express.

24 Q. And then accompanying that, is there a --
25 86

1 names on it.

2 ATTORNEY SINNETT: Your Honor, I didn't
3 want him to tell the jury what that is. There will be
4 somebody from Mailboxes Etc. to explain the documents,
5 if he can tell them what it is basically.

6 THE COURT: Rephrase your question.
7 * * *

8 BY ATTORNEY SINNETT:

9 Q. Agent Morgan, appended to those four
10 documents you have talked about, what is the rest of
11 the group of documents? *record of prior package*

12 A. Just records of packages received by that
13 particular Mailboxes Etc. dating back to October of
14 2000.

15 Q. And running through when?

16 A. January of 2001.

17 Q. Now, did anybody ever come to pick up that
18 parcel that you created on January 9th of 2001?

19 A. On January 9th, no, they didn't. We learned
20 after contacting Detective Sipes in California because
21 of the time difference that the parcel was intercepted.

22 * * *

23 ATTORNEY NERO: I would object if he is
24 actually telling us a conversation he had with
25 Detective Sipes, and that's my objection. It is

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1 hear say.
 2 ATTORNEY SINNETT: Your Honor, I can
 3 rephrase the question if that would make it any easier.
 4 THE COURT: Please do. You are getting
 5 into that hearsay area.

* * *

BY ATTORNEY SINNETT:

8 Q. Agent Morgan, without referring to what
 9 conversation you may or may not have had with Agent
 10 Sipes, what did you do at the end of July 9th with the
 11 package?

12 A. Removed the package from that particular
 13 Mailbox Etc.s and took possession of it to meet again
 14 on the 10th and placed the same package at that
 15 location and await the arrival of the individual.

16 Q. And did you do that on the 10th?

17 A. Yes, we did.

18 Q. Around what time was that done?

19 A. It was in the morning. I'm not sure exactly
 20 what time.

* * *

22 (Whereupon, a box was produced and
 23 marked for identification as Commonwealth's Exhibit No.
 24 2.)

* * *

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1 Gallant, four door, with the Defendant operating,
 2 driving to the lot, and park into a parking space.
 3 We observed him exit the vehicle and
 4 walk in.

* * *

6 ATTORNEY NERO: Object as to we.
 7 Talking about himself is fine.

8 THE COURT: Please rephrase.

9 THE WITNESS: I observed the Defendant
 10 drive into the parking lot driving a silver four-door
 11 Mitsubishi Gallant, parked the vehicle, exit the
 12 vehicle, and walk into the Mailbox Etc.'s
 13 establishment.

* * *

BY ATTORNEY SINNETT:

16 Q. All right.

17 Now specifically before we get to what
 18 happened after that, the address that's referenced on
 19 there has to be delivered to, what does that indicate?

20 A. 2536 Eastern Boulevard, business name
 21 Expressions Express, Suite 164, York, Pa., 17402.

22 Q. Okay.

23 And what did you use as a return address?

24 A. It was from James Morgan at 11921 Southwest
 25 29th Street, San Diego, California. *stop*

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1 ATTORNEY SINNETT: May I approach the
 2 witness?

3 THE COURT: You may.

* * *

BY ATTORNEY SINNETT:

6 Q. Agent Morgan, I want to show you what's been
 7 marked as Commonwealth's Exhibit No. 2 for
 8 identification purposes.

9 Tell us what that is.

10 A. This is the box that myself, Detective
 11 Kessler, and Detective Peddicord put together at UPS.

12 Q. And that's the one you talked about earlier
 13 after you met with the manager from UPS?

14 A. That's correct. It is filled with rock salt.

15 Q. And is that the same package you attempted to
 16 deliver on the 9th, but was never picked up?

17 A. Yes, it is.

18 Q. And is that the package that you delivered on
 19 the 10th?

20 A. That's correct.

21 Q. And what happened on the morning of the 10th?

22 A. The package -- the parcel was placed there at
 23 Mailbox Etc.s by me, and surveillance was set up on the
 24 perimeter of the business.

25 We observed a silver-colored Mitsubishi

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1 Q. How did you come up with that return address?

2 A. We knew that the parcel that was intercepted
 3 was coming from California, so we created a California
 4 address.

5 Q. Basically, you put your name on it and made
 6 up an address?

7 A. That's correct.

8 Q. And then when you saw the Defendant leave his
 9 car, walk up to the Mailboxes Etc., what happened then?
 10 What did you see happen then?

11 A. Well, I alerted all the other officers on
 12 surveillance that the potential subject had arrived. I
 13 received a phone call from inside of Mailbox Etc. that
 14 that subject --

* * *

16 ATTORNEY NERO: Objection, Your Honor.

17 ATTORNEY SINNETT: I think that's going
 18 to be a present sense impression.

19 THE COURT: He said he received a phone
 20 call.

21 Next question.

* * *

BY ATTORNEY SINNETT:

24 Q. Okay.

25 You received a phone call. What did they say

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1 on the phone call 21-cv-01015-YK Document 200-5

2 A. That the subject we were --

3 * * *

4 ATTORNEY NERO: That was the objection,
5 what was said in the phone call. Same question.

6 ATTORNEY SINNETT: That's what I'm
7 offering as a present day situation.

8 THE COURT: No. That's hearsay.

9 ATTORNEY SINNETT: Okay.

10 THE COURT: Objection sustained.

11 * * *

12 BY ATTORNEY SINNETT:

13 Q. As a result of the phone call you received,
14 what happened?

15 A. The phone call corroborated what we already
16 suspected. Moments later we observed the Defendant
17 exiting the Mailbox Etc.s carrying the fake parcel.

18 Q. Was he carrying that box?

19 A. Yes, he was.

20 Q. Did you see him carrying that box?

21 A. Yes, I did.

22 Q. What happened while you saw him -- after you
23 saw him leave with the box?

24 A. We began to exit our vehicles.

25 As he crossed off the sidewalk and onto the

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1 A. He was taken into custody, placed in the van.
2 I read him his Miranda warnings that the -- which he
3 stated he understood. He was then transported to York
4 City Police Department, where he was read his Miranda
5 warnings again.

6 Q. And when you tell you read Miranda warnings,
7 what are you including as Miranda warnings?

8 A. Explained to him he had the right to remain
9 silent, that anything he said can and will be used
10 against him in a court of law, that he had the right to
11 the presence of an attorney prior to any questioning if
12 he so desired and could not afford an attorney, one
13 would be appointed for him by the Courts free of
14 charge; and if he chose to make a statement, he may
15 stop at any time.

16 I asked him if he understood his rights, and
17 he stated that he did.

18 Q. And at that time he gave you a statement?

19 A. Yes, he did.

20 Q. Okay.

21 What did he provide to you after you gave him
22 those Miranda warnings?

23 A. He stated that he had flown in from *statement*
24 California via the Harrisburg International Airport,
25 rented a vehicle, and drove to York and to Mailbox

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2 office, approached the Defendant, identified himself
3 with badge displayed.

4 The Defendant then threw the parcel at Agent
5 Westmoreland and began to flee back towards the Mailbox
6 Etc.s.

7 He was then taken into custody by Agent
8 { Westmoreland, myself, and other members of the task
9 force and secured him. }

10 Q. And when you say you saw him basically have
11 this confrontation with Agent Westmoreland and he threw
12 the package, what do you mean by that?

13 A. He was carrying in his hands with two hands
14 as he was walking, when Agent Westmoreland confronted
15 him, identified himself, he took the parcel and threw
16 it at him and ran.

17 Q. Okay.

18 You said he ran in a different direction?

19 A. That's correct, back towards Mailbox Etc.s.

20 Q. Did he get very far before he was

21 apprehended?

22 A. No, he didn't.

23 Q. Now, after he was apprehended, taken into
24 custody, I assume, was it you -- well, what was done
25 next?

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1 Etc.s to retrieve his parcel, which he believed was
2 hair supplies.

3 Q. And were there any other questioning done of
4 him at that time?

5 A. He did not want to elaborate on anything
6 else.

7 Q. And then was that the end of your interaction
8 with the Defendant that day?

9 A. That's correct.

10 Q. You personally, okay.

11 On a second or subsequent day, were you --
12 did you interview the Defendant again at the request of
13 Agent Sipes?

14 A. Yes, I did.

15 Q. And was he given the same Miranda warnings as
16 previously?

17 A. Yes, he was.

18 Q. And what did he reveal to you as a result of
19 that interview?

20 A. Stated that he lived in California; actually, *statement*
21 well he stated that his wife was here in York and that
22 he was living here with her on West Market Street, that
23 he owned a beauty shop, that he was the manager of her
24 beauty shop, that he was responsible for basically
25 paying utilities at the residence, and that he really

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1 didn't have any employment, he was on Social Security
2 and that he flies to California to pick up his Social
3 Security. He is on Social Security for disability.

4 Q. Do you recall if he told you what the amount
5 of his Social Security allotment is per month?

6 A. I don't remember right offhand.

7 Q. Okay.

8 And he indicated to you that he flew to
9 California to pick up his Social Security check?

10 A. Yes, he did. *Lie*

11 Q. Did he indicate with what frequency he did
12 that?

13 A. I don't recall if he did.

14 Q. Would, Agent Morgan, taking a look at the
15 report you generated in this case help you to refresh
16 your recollection?

17 A. Yes, it would.

18 * * *

19 ATTORNEY SINNETT: Your Honor, may I
20 approach the witness?

21 THE COURT: You may.

22 * * *

23 BY ATTORNEY SINNETT:

24 Q. Agent Morgan, I want to show you a -- appears
25 to be a report generated by you. I am not going to

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1 Q. Per month?

2 A. Yes.

3 Q. And does he indicate how often he goes to
4 pick up those disability payments?

5 A. Once a month. *statement*

6 Q. Okay.

7 Now, at the conclusion of that interview with
8 him, I have to ask you, did you receive at any point
9 the box that Agent Sipes had intercepted out in
10 California?

11 A. Yes, I did.

12 Q. When did you receive that?

13 * * *

14 ATTORNEY NERO: Just for clarification,
15 Your Honor, so that they understand at the conclusion
16 of this interview, you are saying, that's fine? I just
17 want to make sure.

18 * * *

19 BY ATTORNEY SINNETT:

20 Q. When did you receive the box from Agent
21 Sipes?

22 A. On the 11th.

23 Q. That would have been the day after this took
24 place down on Eastern Boulevard?

25 A. Yes.

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1 find it, but ask you to take a look at that and ask
2 if that helps you to refresh your recollection about
3 the Defendant's Social Security circumstances.

4 A. I have to search through to find that
5 particular area in the report.

6 Q. Take your time.

7 A. I think it's going to be in the supplemental
8 portion of the report. It should be labeled
9 Supplemental 1.

10 Q. Same thing with this report. Just take a
11 look at it and tell me if it helps refresh your
12 recollection.

13 A. Yes.

14 Q. Now, after taking a look at that -- and not
15 reading from it or anything -- but after taking a look
16 at that, do you now know what the Defendant revealed
17 was the amount of Social Security money he received?

18 A. Yeah. I have to find it in here where we
19 actually talked to him.

20 Q. Take your time and read it and tell me if
21 that refreshes your recollection.

22 A. Okay.

23 I don't see where he actually states how much
24 he receives in Social Security. Oh, okay. Yeah, he
25 gets disability \$600.00 a month.

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1 Q. And were you able to compare the box you
2 received from Agent Sipes with the one you had
3 participated with in preparing the previous day?

4 A. Yes.

5 Q. Were they similar, identical, what?

6 A. Not very similar, but the same type of box,
7 just I believe the one that we received in the mail was
8 larger, was a larger box, shaped differently.

9 Q. Were they both brown cardboard boxes?

10 A. Yes.

11 Q. Do they both bear the same address as being
12 sent to?

13 A. Yes.

14 Q. After you received the box from Agent Sipes,
15 what did you do regarding that box?

16 A. It was field tested by me, tested positive
17 for marijuana, and was secured in my evidence locker,
18 and then it was eventually turned over to Agent Cunney
19 of DEA.

20 Q. All right.

21 And let me ask you this: When you received
22 the box, how did you receive it? Was it in another
23 box?

24 A. Yes.

25 Q. Was it --

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* * *

CROSS EXAMINATION

BY ATTORNEY NERO:

Q. Now, Agent Sipes --

A. Morgan.

Q. Thanks for the correction.

A. Morgan.

Q. When did you have this conversation with my client?

A. Which conversation?

Q. That you had the report from?

A. The interview?

Q. Yes.

A. I believe it was conducted the 11th.

Q. Of which month?

A. January.

Q. Did you take a statement from him?

A. I wrote down what he said to me.

Q. Okay.

Do you have a copy of that statement?

A. It's in my report.

Q. Can we see it?

* * *

ATTORNEY SINNETT: *report was not given until* He has it, Judge. I *of trial*

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1 A. It was packaged in another box. Document 200-51

2 Q. And you opened that. Was it readily apparent
3 what was contained inside that box when you got it or
4 what?

5 A. The outside box?

6 Q. Right.

7 A. Contained the other box with packaging around
8 it.

9 Q. Okay.

10 And were you able to see any marijuana in
11 there when you opened it up or not?

12 A. Not right then. Once I removed the contents
13 of the inner box and opened it up, I was able to see
14 what was in it.

15 Q. Okay.

16 And you indicated that you then took -- did
17 you send the entire box to DEA laboratory or what?

18 A. Yes. It was turned over to Andrew Cunney,
19 and the entire package was sent to his lab.

20 Q. Okay.

* * *

22 ATTORNEY SINNETT: I don't have any
23 further questions of this witness at this time, Your
24 Honor.

THE COURT: Cross-examine.

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1 made sure he had it before I showed it to the witness.

2 THE COURT: Do you have it available?

3 ATTORNEY NERO: Oh, this is the report.

4 I'm talking about the statement you said you took from
5 my client, the statement you said my client -- you said
6 you took a statement. You wrote something down. Do
7 you have a copy of that?

8 THE WITNESS: No, it was memorialized in
9 my report.

* * *

11 BY ATTORNEY NERO:

12 Q. When did you prepare your report?

13 A. February 16th.

14 Q. And on February 16th, you have that my client
15 gave you this information?

16 A. That's when I prepared my report, and that
17 information is in there.

18 Q. February 16th, okay.

19 I don't have that February 16 report. I
20 have --

21 A. Supplemental 1; Supplemental Report 1 has the
22 date up in the left corner.

23 Q. Supplemental 1 is the same thing I have here
24 that you signed April 5th, 2001?

25 A. That's correct.

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1 Q. Are you telling us it was done when, February
2 15th?

3 A. Yes.

4 Q. And the interview was done in January?

5 A. Excuse me.

6 Q. The interview was done in January?

7 A. That's correct.

8 Q. You typed this February 15th. You spoke to
9 him in January?

10 A. Right.

11 Q. Did you write down anywhere the conversation
12 you had with him, the interview you had with him, the
13 statement you said he gave you?

14 Do you have that written in your notes
15 anyplace?

16 A. No, I don't. That information was
17 memorialized in my report.

18 Q. Okay.

19 And, this report you signed off on April 5th?

20 A. That's correct.

21 Q. Now, you did a report before this, correct?
22 This wasn't your first report?

23 A. Yeah. There was an initial report completed,
24 yes.

25 Q. And in your initial report, would you agree

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Case Complaint
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with case that nowhere in your initial reports, until one word was written about this supposed interview you had with my client?
A. No. It is in the supplemental report.
Q. Here is my question. Please answer me yes or no.
Would you agree that you prepared a report January 22nd?
A. Yes, if that's what the date is on that report, yes. I don't have it before me.
Q. Now, this was ten, eleven days after you supposedly spoke to my client and he gave you the statement?
A. That's correct.
Q. You never included in this report that he said these things to you?
A. That's correct. It's in the supplemental report.
Q. And then in April, you signed the report and stated he told you those things back in January?
A. In February, when I did the supplemental, I included all that stuff in the supplemental. All the stuff that happened on the first day and anything involving the interception of the drugs is on the initial report, and the interviews that were conducted

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Q. You understand my question?
A. Excuse me.
Q. Do you understand my question?
A. Yes.
The notes that you are looking for are destroyed. They were memorialized in the report.
Q. Oh, you destroyed them?
A. Yeah. They no longer exist.
Q. Oh, okay.
When were they destroyed?
A. I don't remember the exact date.
Q. You destroyed them. I mean, do you remember which month?
A. No. It would have been once the report was completed.
Q. So, it would be sometime in February?
A. Once I finished the report.
Q. The report that you are referring to was signed by you in April, correct?
A. Right.

* * *

ATTORNEY SINNETT: Your Honor, this has all been asked and answered. This is the third time asking when he signed it.

THE COURT: Is there an objection there?

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was placed on the supplemental report which was done after the initial report. That's what you have.
Q. Okay.
Let me ask you this: Would you agree that the initial report was done supposedly after you took a statement from my client?
A. Yes.
Q. Okay.
Do you have -- did you sign something? You said you gave it back?
A. No.
Q. Did he sign a statement?
A. No.
Q. Did you take notes as he was talking to you? Did you write something down?
A. Yes, I did.
Q. Do you have a copy of those notes you took down?
A. No. It was memorialized in the supplemental report.
Q. But you prepared the supplemental report from your memory or from something you wrote down?
A. It was from the notes that I had taken.
Q. Well, do you have a copy of those notes?
A. No.

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ATTORNEY SINNETT: There is an objection, Your Honor. It is asked and answered.
THE COURT: Overruled.
ATTORNEY NERO: And I am going beyond that.

* * *

BY ATTORNEY NERO:
Q. This report was approved by your supervisor, correct?

A. That's correct.
Q. And he approved them on April the 11th of 2001?

A. Once the report is turned in and it is sufficient to his satisfaction, he signs off on it.

Q. Okay.
And then the regional director approved this report on April 13th, 2001?

A. That's correct.
Q. Neither of these gentlemen saw the notes you took?

A. No.
Q. Because you destroyed them before?
A. Right. It's not customary that they would see them.

Q. Now, let's go back to January 9th. Was it

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1 January 9th or January 8th, that you received a call
 2 A. January 8th.
 3 Q. And that was from somebody in Pennsylvania?
 4 A. That's correct.
 5 Q. As a result of that, you made a call or
 6 somebody else called you?
 7 A. I made a call.
 8 Q. I believe you testified that as a result of
 9 conversation you had with the person you called, you
 10 made up this makeshift box next to you?
 11 A. Yes.
 12 Q. On that box, you have your name and an
 13 address somewhere in San Diego as a return address?
 14 A. That's correct.
 15 Q. Was a name and return address supplied to
 16 you?
 17 A. You are asking if it was supplied to me?
 18 Q. Yes.
 19 A. No.
 20 When this box was made up, it was in the
 21 morning, I'm thinking about 8:00, 8:30 in the morning
 22 our time, so it would have been 5:00, 5:30 California
 23 time.
 24 So, no, I didn't have that information at
 25 that time.

109

1 A. That's correct.
 2 Q. So, you were told it is not going to be sent,
 3 and you decided to make up a box?
 4 A. That's correct.
 5 Q. But later on you received the box?
 6 A. Excuse me?
 7 Q. Later on, the box was sent, and you received
 8 it?
 9 A. Right. It was sent to my office.
 10 Q. Directly to you?
 11 A. That's correct.
 12 Q. You signed for that box?
 13 A. No. *said, he regional director signed for the package*
 14 My regional director, I believe, signed for
 15 it. He was informed that it would be coming, and he
 16 signed for it.
 17 Q. Do you have a copy of the receipt?
 18 A. No.
 19 Q. Is that destroyed as well?
 20 A. No, not that I know of. I just don't have
 21 it.
 22 Q. Were you there when you -- your regional
 23 supervisor signed for it?
 24 A. No. I was still in York.
 25 Q. This box came, and the box eventually got to

111

1 Q. Did you have any information about the size
 2 of the box?
 3 A. No.
 4 Q. Did you have any information about the type
 5 of writing that was on the box?
 6 A. No, just where it was addressed to.
 7 Q. All you were told is that a box was addressed
 8 to a location?
 9 A. A business and an address.
 10 Q. Nowhere was it told to you that Tyrone --
 11 Tyrone James' name was on any box? Am I correct?
 12 A. Oh no, no, it wasn't, no.
 13 Q. Now, as a result, you testified you went to
 14 the location, correct, that the box was addressed to?
 15 A. Where are you speaking?
 16 Q. January 8th or 9th, you tell us when you went
 17 there.
 18 A. The 9th.
 19 Q. And on the 9th, would it be correct that the
 20 box had not yet -- the box that was described to you
 21 had not yet left California?
 22 A. That's correct. It wasn't going to leave
 23 California.
 24 Q. It was told to you it was not going to be *package*
 25 sent? *was not going to be sent*

110

1 you?
 2 A. You lost me.
 3 Q. It was received and signed for you told us by
 4 your regional supervisor?
 5 A. That's correct.
 6 Q. What time was the box given to you?
 7 A. Once I arrived in the office that day.
 8 Q. What time was that?
 9 A. It was already -- it was that afternoon. It
 10 was already logged into evidence, and it was already in
 11 the evidence room, secured in the evidence locker. It
 12 was later that afternoon when I arrived in the office.
 13 Q. So, it was never given directly to you?
 14 A. Well, it was in the evidence locker.
 15 Q. That's not my question.
 16 A. And I retrieved it from the evidence locker.
 17 Q. So, you testified that you received this box,
 18 this box was given to you.
 19 I'm asking you do you remember was the box
 20 given directly to you, yes or no?
 21 A. When you are saying given directly to me,
 22 what are you referring to?
 23 Q. Well, that box was just handed to you?
 24 A. No. I removed it from the evidence locker.
 25 Q. That's all we wanted. You found the box in

112

1 the evidence locker? -01015-YK Document 200-5

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2 A. You are speaking of the box that arrived from
3 California?

4 Q. That's it.

5 A. With the drugs?

6 Q. Yeah.

7 A. Yeah, I retrieved it from the evidence
8 locker.

9 Q. Do you know when that was done?

10 A. On the 11th, later in the afternoon.

11 Q. What time was that?

12 A. I don't remember the exact time.

13 Q. My client was already in custody?

14 A. Oh yeah, he was locked up in York County
15 Prison.

16 Q. Now, you told us that on the 9th, you gave
17 the box to UPS driver, am I correct? *UPS driver*

18 A. That's correct.

19 Q. And I'm talking about the box that you made
20 up.

21 A. That's correct.

22 Q. Do you know what time that was?

23 A. No, I don't remember. It was in the morning.
24 I don't remember the exact time.

25 Q. The morning?

113

1 first, Mr. Nero?

2 THE WITNESS: I was told that a parcel
3 was en route to an address in Pennsylvania, the Mailbox
4 Etc.s, and I was given the particulars on that. I
5 didn't find out until the next day that that parcel was
6 actually a two-day parcel and was going to arrive at
7 the 10th.

8 * * *

9 BY ATTORNEY NERO:

10 Q. So, you found out the next day --

11 A. That's correct.

12 Q. -- being the 10th.

13 When was it told to you that the parcel was
14 not going to be sent, that the parcel was never going
15 to be sent?

16 A. I found that out on the 8th.

17 Q. On the 8th?

18 A. That's correct.

19 Q. So, on the 9th, you took the parcel in the
20 morning, you gave it to the UPS driver, and you saw him
21 enter the location? *UPS driver*

22 A. That's correct.

23 Q. Did you enter the location to see where the
24 package was placed?

25 A. Yes.

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1 A. Un-ham, the morning of the 9th.

2 Q. And you stayed at the location the entire
3 day?

4 A. No.

5 Q. When did you leave the location?

6 A. Once I was able to confirm that the package
7 which was scheduled to arrive there was not coming
8 until the 10th.

9 Q. Okay.

10 A. It wasn't -- we thought initially it was an
11 overnight package, but we learned that it wasn't. It
12 was, I believe, a two-day package.

13 Q. Thank you.

14 A. That it was going to come on the 10th.

15 Q. Would it be fair to say that since you are
16 telling us that you thought it was an overnight
17 package, it was never told to you that an overnight
18 package was coming?

19 A. I was told that a parcel was --

20 Q. So, here is my question.

21 A. I'm explaining it to you.

22 * * *

23 ATTORNEY SINNETT: He is entitled to
24 answer that question first.

25 THE COURT: Why don't you get an answer

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1 Q. Did you stay at the location until you
2 removed the package?

3 A. Outside.

4 Q. You stayed outside?

5 A. Yes.

6 Q. What time was it that you left with the
7 package on the 9th?

8 A. It would have had to have been somewhere
9 between 10:00 and 12:00 because there is actually a
10 three-hour lapse in time between our time and
11 California, so I had to actually wait till I could get
12 in touch with the individual in California to solid up
13 some information.

14 Q. Is your answer that you don't recall the
15 time?

16 A. Yeah, I don't. It had to be around that time
17 though.

18 Q. Are you saying that because of the difference
19 in time between California?

20 A. Yeah.

21 Q. You have no independent recollection what
22 time it actually was?

23 A. No. It was close to lunchtime for us. I
24 don't know the exact time, but it was close to
25 lunchtime.

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1 Q. On the 10th, you testified that you took the
 2 package back.
 3 A. No.
 4 Q. You did not?
 5 A. Oh, took it back where?
 6 Q. To Mailboxes Etc.
 7 A. Yes, on the 10th, yes.
 8 Q. You did do that?
 9 A. Yes.
 10 Q. What time did you take it back?
 11 A. It was in the morning. It would have been
 12 closer to the time they opened.
 13 Q. Did you also meet the UPS driver or --
 14 A. No.
 15 Q. So, there was no UPS involved?
 16 A. That's correct.
 17 Q. So, you took the box there yourself?
 18 A. That's correct.
 19 Q. And who did you give the box to?
 20 A. It was placed in the same spot where I
 21 retrieved it from the day before.
 22 Q. So, you just walked in and placed this box on
 23 the spot --
 24 A. Well, walked in, acknowledged the clerks that
 25 were there who were familiar with me, and explained to

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1 that I was placing the package there for the day,
 2 and they knew I was coming back.
 3 Q. That was sometime in the morning, you're
 4 saying?
 5 A. Excuse me.
 6 Q. That was sometime in the morning?
 7 A. In the morning, yes.
 8 Q. Now, you just told us that it was told to you
 9 that the box was coming by two-day mail, and it would
 10 arrive on the 10th.
 11 A. That's correct.
 12 Q. Did the box, in fact, arrive on the 10th?
 13 A. No. The -- the actual parcel, if it had been
 14 sent and permitted to go through the mail by
 15 California, would have arrived on the 10th, which is
 16 why I acted the way I did on the 10th.
 17 Once I made contact with the individual I
 18 needed to talk to, they forwarded the parcel to me.
 19 Q. Now, you said to you directly?
 20 A. To my office.
 21 Q. And you supplied them with the name and
 22 address?
 23 A. That's correct.
 24 Q. So, the package had your name on it?
 25 A. I don't know if it did or not. It was

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1 addressed to the Pennsylvania Office of Attorney
 2 General. Whether or not it was addressed to me
 3 directly, I don't recall, but I know it was to my
 4 office.
 5 Q. What happened to the package?
 6 A. What happened to it?
 7 It was eventually turned over to Andrew
 8 Cunney of DEA.
 9 Q. So that package was in the possession of
 10 Andrew Cunney?
 11 A. In possession of the DEA.
 12 Q. Did you destroy anything when you opened the
 13 package?
 14 A. What do you mean?
 15 Q. What I mean, if the package was sent and it
 16 was in your evidence locker and you had it and you
 17 turned it over to Andrew Cunney, is it fair for me to
 18 assume that Andrew Cunney got that package as you
 19 received it?
 20 A. Whether or not it is in the box that I
 21 received it in from California, I don't remember, but
 22 it may be.
 23 Q. So, you are telling us it is possible that
 24 you might have destroyed the box?
 25 A. I don't recall if I did or not, but it may be

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1 still intact the way I received it from California.
 2 Q. So we understand, you received the box, a box
 3 inside of a larger box, you said?
 4 A. Right.
 5 Q. So you received two boxes, correct?
 6 A. That's possibly correct.
 7 Q. Is it fair to say that at the very least the
 8 box that would have your name and the box that would
 9 have the address originally would be brought here by
 10 Mr. Andrew Cunney?
 11 A. If I held onto the packaging that was done by
 12 Agent Sipes in California, then yes, it would come like
 13 that.
 14 Q. So, you are saying that Agent Sipes changed
 15 the packaging?
 16 A. No. Agent Sipes placed the parcel into a
 17 larger box and packaged that for shipment to me.
 18 Q. So, at the very least, the box that was
 19 originally intended to go, that box is still intact?
 20 A. Yes.
 21 Q. When you received the box -- well, let me
 22 back up a little bit.
 23 You already told us what information was
 24 provided to you. I believe you told the weight of the
 25 box that you were expecting.

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1 Q. Was told that the contents of the box
 2 weighed about nine and a half pounds.
 3 Q. You remember that?
 4 A. Yes.
 5 Q. The package that was sent to you, the box
 6 that weighed nine and a half pounds, how was that
 7 delivered?

8 * * *

9 ATTORNEY SINNETT: I believe this is
 10 answered more than five times. He said it was one box
 11 inside of a larger box.

12 ATTORNEY NERO: I'm not talking about
 13 the packaging. I'm asking how was it delivered by you.

14 THE COURT: Do you know?

15 THE WITNESS: I don't know.

16 ATTORNEY NERO: You don't know?

17 THE WITNESS: No.

18 * * *

19 BY ATTORNEY NERO:

20 Q. And you know -- you are pretty certain you
 21 don't know --

22 A. What, which company transported?

23 Q. Yeah.

24 A. No, I don't know that offhand.

25 Q. Now, you recall testifying before in this

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1 County Police Station?

2 A. York City Police.

3 Q. York City, sorry.

4 And you read him his Miranda warnings inside
 5 the van, you said?

6 A. That's correct.

7 Q. Did he sign anything?

8 A. No.

9 Q. Did you take a statement from him inside the
 10 van?

11 A. No.

12 Q. So, you read him his Miranda warnings and did
 13 not question him?

14 A. Right.

15 Q. Did he agree to speak to you, or did he say I
 16 do not want to speak to you at that time?

17 A. No. I just read him his rights, and I went
 18 to my vehicle to transport him to the station.

19 Q. So, you didn't wait for his response?

20 A. Well, I asked him if he understood his
 21 rights, and he said that he did, but I had no need to
 22 question him right there on the scene. I was going to
 23 question him in City Hall.

24 Q. Okay.

25 What time is this?

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2 A. Yes.

3 Q. In fact, you testified about three times,
 4 correct?

5 A. That's correct.

6 Q. Okay.

7 Do you recall -- and I'm on page 14 -- me
 8 asking you how was the box delivered, and you said I
 9 believe it was delivered UPS to my office?

10 A. Well, I don't know.

11 Q. You don't recall that?

12 A. What you have in front of you, I don't have
 13 in front of me, so, no, I don't.

14 Q. Do you recall me asking you where the box was
 15 sent from?

16 You said, "I received that from California."

17 "It came -- was sent directly to you?" That

18 was my question.

19 And you said, "Right."

20 "And who delivered it to you?"

21 "I believe it was delivered UPS."

22 You don't recall that line of questioning and
 23 answer?

24 A. No, I don't.

25 Q. Now, you took my client, you said, to York

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1 A. I'm not sure of the exact time. It should be
 2 reflected in the initial report. It was in the a.m.

3 Q. What time did you question him at City Hall?

4 A. Upon arriving at City Hall, probably 45
 5 minutes to an hour later.

6 Q. When you got there, did you give him his
 7 Miranda rights again?

8 A. Yes, I did.

9 Q. So, you read him his Miranda rights three
 10 times now?

11 A. No, twice.

12 Q. Oh. Did you not testify before that on
 13 January 11th?

14 A. Well, you are saying on that particular day
 15 you said three times. I read him his rights twice on
 16 that day. You are talking about another day now. Next
 17 day I read him his rights again.

18 Q. I am talking about in total. So far, you
 19 have read him his rights three times?

20 A. That's correct.

21 Q. Do you have a copy of the statement he made
 22 to you when you questioned him in the York City Jail?

23 A. No, I don't.

24 Q. You took notes?

25 A. That's correct.

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1 Q. You destroyed them?
 2 A. Excuse me.
 3 Q. You destroyed those notes as well?
 4 A. Yes.
 5 Q. When were the notes destroyed?
 6 A. Once the report was written.
 7 Q. Did you make any attempt to have Mr. James
 8 sign a statement or a report or anything?
 9 A. No.
 10 Q. So, all we have here is what you are saying
 11 Mr. James said to you?
 12 A. Yeah, the truth, yes.
 13 Q. I don't understand if you even know what the
 14 truth is.
 15 I'm asking you all we have here is what you
 16 are saying Mr. James said to you.
 17 A. And that's what Mr. James said to me.
 18 Q. I am not asking you if that's what he said to
 19 you. I'm asking you that's all we have here?
 20 A. Yes.
 21 Q. You have no way of -- did not keep any notes
 22 at all, any signatures, nothing that he said to you
 23 when he supposedly did that?
 24 * * *

25 ATTORNEY SINNETT: Your Honor, I believe

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1 minutes?
 2 A. We could see that he was inside, and then we
 3 watched him walk out.
 4 Q. I'm asking you what you saw, not we.
 5 A. Well, I could see that he was inside, but
 6 then I saw him come walking out with the parcel.
 7 Q. Did you see what he did while he was inside?
 8 A. No.
 9 Q. But he was inside for a few minutes?
 10 A. Right.
 11 Q. Now, when you left the parcel same place you
 12 had it there before, you then went outside?
 13 A. I didn't run outside, no.
 14 Q. You stayed inside?
 15 A. No. I mean I walked out. I didn't run out.
 16 Q. I didn't say run. I said you went outside.
 17 A. I thought you said you ran outside. Yes. I
 18 did. I exited the establishment and returned to my
 19 vehicle.
 20 Q. How long were you outside with the package
 21 inside before Mr. James came?
 22 A. I'm not sure. We were out there awhile.
 23 Q. A couple of hours?
 24 A. Could have been.
 25 Q. You are not sure?

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that's been asked and answered.

2 THE COURT: It has been. Objection
 3 sustained.

4 ATTORNEY NERO: Okay.

5 * * *

6 BY ATTORNEY NERO:

7 Q. Now, when you stopped Mr. James coming
 8 outside with a package, how long was he inside the
 9 establishment for?

10 Let me rephrase that. By the time he drove
 11 up, you saw him drive up, correct?

12 A. That's correct.

13 Q. By the time he entered the establishment and
 14 came out, how much time would you say elapsed?

15 A. Not long, a few minutes.

16 Q. Minutes?

17 A. Yes.

18 Q. Would it be fair to say then he stayed inside
 19 the establishment for some time?

20 A. It wasn't long at all.

21 Q. I understand, but he just drove up, went
 22 inside, came back out, he spent a few minutes, and then
 23 he stayed inside for a few minutes?

24 A. Right.

25 Q. Did you see what he did inside for the few

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1 A. No.
 2 Q. And I'm correct, am I not, that you never
 3 went back inside from the time he -- from the time you
 4 came out having delivered the package to the time he
 5 came, you never entered the establishment?
 6 A. I may have gone back in.
 7 Q. Do you remember?
 8 A. I don't remember if I did or not, but it was
 9 a possibility.
 10 Q. Did you see the package inside?
 11 A. When I went -- when I'm inside, yes, I could
 12 see it.
 13 Q. When you came out?
 14 A. Oh, you can't see it from the outside.
 15 Q. So, you didn't see what happened to the
 16 package, so you have no idea what happened to the
 17 package from the time you left it till the time you saw
 18 Mr. James walk up with it?
 19 A. I know that when I placed the parcel in there
 20 and he retrieved it, it was in the same condition as it
 21 was when I put it there, when I took possession of it
 22 from him, and there was nothing altered on it.
 23 Q. I never asked about that, never asked about
 24 that on the package.
 25 My question is do you know what happened to

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the package, if anything, from the time you left it

approach him from the front or the rear?

until the time you saw Mr. James exit the establishment?

A. We approached from the front where he could see you.

A. No.

Q. So he was walking towards you?

Q. Now, when he came outside, he started going to his vehicle, correct?

A. That's correct.

A. Excuse me.

Q. And at that time the establishment would be behind him then?

Q. He started going towards his vehicle?

A. Was behind him, yes.

A. Yes.

Q. And when he came -- when you approached him, he threw the package and went back to the establishment?

Q. Did he have just one package or several packages?

A. No, he just had one parcel.

A. He threw the package at Agent Westmoreland and ran back towards the establishment.

Q. And you were all in plain clothes?

A. Yes.

Q. Not outside, but back towards the establishment?

Q. How many officers?

A. Right, towards the building.

A. I don't know, roughly -- I don't know, maybe seven or eight.

Q. Towards the building?

Q. Is it fair to say that you all came at him at the same time?

And I believe you testified that when you took his statement, he told you that he expected beauty supplies?

A. No.

Myself and Agent Westmoreland exited the vehicle, and I was trailing behind as Agent Westmoreland approached him and identified himself and displayed his badge.

A. He said he had no idea about any marijuana.

He said he thought it was beauty supplies.

Q. Now, when you approached him, did you

Q. He thought it was beauty supplies?

A. That's correct.

Q. Did you weigh the package that you left?

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130

A. Excuse me.

Q. Did you weigh the package that you left, that package right there?

A. I don't recall if I did or not.

Q. Do you know how much it weighs now?

A. No.

Q. Do you know whether when he went inside he had to sign for the package?

A. Excuse me.

Q. Do you know whether or not when he went inside he had to sign to receive the package?

A. I have to look for the records to see if he did sign for this particular parcel.

Q. You don't know?

A. I have to check the records. If you want to give me time to check the records, I'll check.

Q. I'm asking you, do you know, yes or no?

A. No.

Q. Now, your testimony is that you took him to the police station and searched him, correct?

A. He was transported to the police station, and a search of his person was conducted.

Q. Did you search him personally?

A. I assisted in the search.

Q. And doing your search, you said you found

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some business cards on him?

* * *

ATTORNEY SINNETT: Your Honor, that wasn't Agent Morgan's testimony. That was in my opening.

ATTORNEY NERO: That's my recollection.

THE COURT: Did you find the cards, Agent Morgan?

THE WITNESS: The cards were located in his wallet by Detective Peddicord and Detective Craul.

* * *

BY ATTORNEY NERO:

Q. And turned over to you?

A. Excuse me?

Q. They were turned over to you?

A. They were shown to me, yes.

Q. Did he have among the cards a card with a lawyer's number on it?

A. I don't know.

Q. How many cards were in the wallet in total?

A. Oh, there were a series of cards and papers.

Q. Twenty, twenty-five, thirty?

A. I couldn't tell you right offhand.

Q. But you focused on three cards?

A. It was brought to my attention that there

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1 were a number of Mailbox Fics Cards. Document 200-5

2 Q. How many?

3 A. For various locations in York, Pennsylvania,
4 and in Maryland.

5 Q. How many cards?

6 A. I don't know how many exactly.

7 Q. Now, you then went, you testified, to the
8 second location, and you spoke with the people there?

9 A. I did not testify to that.

10 Q. You never went to the second location?

11 A. I didn't testify to that.

12 Q. Well, tell me, did you go?

13 A. Did I go to a second location?

14 Q. Yes.

15 A. Yes.

16 Q. And when you went to that location, my client
17 was already in custody?

18 A. That's correct.

19 Q. In fact, has never been released from custody
20 from the time you arrested him?

21 A. That's correct.

22 Q. The package that you found in the second
23 location, who was that addressed to?

24 * * *

25 ATTORNEY SINNETT: Your Honor, I believe

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1 Q. Well, this one occurred on March 28th, 2001,
2 before District Justice Harold D. Kessler.

3 A. Okay.

4 Q. Do you recall that?

5 A. I remember being at a preliminary hearing
6 before District Justice Kessler.

7 Q. Do you remember me asking you questions?

8 A. Yes, you did ask me questions.

9 Q. Do you remember me asking you about the
10 weight --

11 A. I don't recall if you did, but if you have a
12 transcript on that, then you did.

13 Q. Let me read it then.

14 * * *

15 ATTORNEY SINNETT: Could you tell us
16 what page and line you are on?

17 ATTORNEY NERO: I'll do that. *dim 130-25*

18 Actually, I begin on page 24, but I am
19 going to direct him specifically to page 25. Page --
20 the bottom of page 24, he said, "So that we are clear
21 then, the only thing you can -- you recall he said at
22 the time was that it may have been a cardboard box? He
23 didn't give you any dimensions?"

24 You said you don't recall.

25 I said, "No color, no weight, nothing at

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2 at this point we are outside the scope. I had
3 indicated previously we are going to try to do it
4 chronologically, and he is going to testify about the
5 Shrewsbury location later.

6 THE COURT: It does seem beyond the
7 scope.

8 ATTORNEY NERO: Court's indulgence.

9 * * *

10 BY ATTORNEY NERO:

11 Q. Now, earlier I asked you about information
12 concerning the weight of the package, and you said it
13 was told to you and you now remember it was nine and a
14 half pounds.

15 A. That the contents weighed about nine and a
16 half pounds. The total package -- I don't recall the
17 exact weight of the total package.

18 Q. So, you had a conversation about the total
19 package and the contents?

20 A. No. I just noted the contents. I was told
21 they weighed about nine and a half pounds.

22 Q. I refer to the same preliminary hearing on
23 March 28, 2001. Do you recall that? Do you recall
24 that?

25 A. There were three preliminary hearings. The
exact dates, I do not recall the date of the hearings.

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1 all?"

2 He said, "I don't recall."

3 Do you recall that?

4 THE WITNESS: I don't have the
5 transcript before me, but if that's what you have
6 written --

7 * * *

8 BY ATTORNEY NERO:

9 Q. But today you remember that he told you nine
10 and a half pounds?

11 A. Right.

12 Q. You will admit that -- you will agree that
13 February -- March 28 was closer in time to January than
14 today?

15 A. Yes.

16 Q. You have, in fact, gone over all the notes
17 for this case, correct?

18 A. I have reviewed paperwork.

19 Q. Do you recall at any time -- and when I say
20 any time, talking about while he was in custody whether
21 it was at York City Police Station or at the York
22 County Prison, my client asking you to be allowed to
23 make a phone call?

24 A. Yes.

25 Q. And did you allow him to do that?

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Q. How many times did he ask you to allow him to make a phone call?

A. I think he asked me in City Hall, and I think he may have asked me while we were en route to the jail.

Q. So, you could remember twice?

A. At least twice, yeah.

Q. At least twice, could be more?

A. I don't know.

Q. You denied him both occasions?

A. That's correct.

Q. And he told you I want to call my lawyer, did he not?

A. No, he never told me that.

Q. What did he say he wanted to call for?

A. He said he wanted to call his family.

Q. He said that both times?

A. Yeah, he wanted to make a phone call to his family.

Q. And you denied him both times?

A. That's correct.

* * *

ATTORNEY NERO: I have no further questions at this time, Your Honor.

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all cases?

A. Yes.

Q. When the report is generated?

A. That's correct.

Q. What's the purpose of the supervisor review of the report that you generate?

A. That the report contains necessary information for the case and once given his approval is signed off on.

Q. And is that again customary with all reports you generate?

A. Yes, it is.

Q. Now, why do you have one report that's indicated as an initial report and a different report indicated as a supplemental report? Why are they -- why isn't it all one report?

A. Because you initiate the -- what is the initial report? You put the general information in there, and then as the investigation goes on or if something else occurs, then you do a supplemental report to it with that additional information included in it.

Q. Even if the two events are only a day apart?

A. That's correct.

Q. Now, you indicated on cross examination as

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anything further, Mr.

Sinnett?

ATTORNEY SINNETT: Very briefly, Your Honor, very briefly.

* * *

REDIRECT EXAMINATION

BY ATTORNEY SINNETT:

Q. Agent Morgan, you indicated on cross examination you prepared both of those reports from notes you had taken?

A. That's correct.

Q. Is that normally what you do?

A. Yes, it is.

Q. You interview somebody, you take notes, and then you generate a report from those notes?

A. That's correct, unless the person is in a very cooperative mode working as an agent for the Commonwealth.

If he makes a statement, that statement is signed by him and dated. In this case, it wasn't, so --

Q. My question is though you generate a report on notes that you take at an interview?

A. That's correct.

Q. And do you customarily destroy those notes in

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well that you denied the Defendant this request to make a phone call.

Is that customary, or do you generally give people phone calls if they ask for them?

A. Normally people are permitted phone calls, but depending on the nature of the investigation whether or not a phone call would jeopardize the furtherance of that investigation, it is at my discretion.

Q. So, there is nowhere you are required to allow somebody to make a phone call?

A. No.

Q. Now, can you tell us why you made the box the way you did?

A. Because from my experience because I didn't have a chance to observe the actual package that was to be en route from my experience, I have known the parcels to be packaged in this similar manner, so it was placed together like that for that reason.

Q. And why didn't you wait till you actually received the parcel from California before you did that?

A. Because of time, time constraints, not knowing how much time we had. Normally we don't have much time to work with, so we try to do it as quickly

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1 as possible.
2 * * *
3 ATTORNEY NERO: I object to this.
4 THE COURT: The objection is sustained.
5 * * *

6 BY ATTORNEY SINNETT:

7 Q. Okay.

8 Then when you indicated on cross examination
9 you were told the parcel was not going to be sent, what
10 did you mean by that?

11 A. That California held onto the package because
12 they hadn't made contact with any law enforcement.

13 * * *
14 ATTORNEY NERO: I'd object as to --

15 ATTORNEY SINNETT: Your Honor, he opened
16 this door on cross examination. I believe there is
17 some confusion.

18 ATTORNEY NERO: Not as to what was said.

19 ATTORNEY SINNETT: I believe he opened
20 this door on cross examination. I'm trying to
21 alleviate the confusion that was generated. This is
22 the last question I have.

23 THE COURT: Well, all right. Go ahead.

24 * * *

25 BY ATTORNEY SINNETT:

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1 Q. So that we are clear then, it follows that
2 the stuff in the supplemental investigation would have
3 occurred after the initial --

4 A. It is at the discretion of the person
5 memorializing the report.

6 If you choose to do it chronologically like
7 that, you can, or you may choose to put the meat of the
8 investigation in the initial report and any substance
9 adding to it or complementing that information can be
10 added in a supplemental and so on.

11 Q. Let's look at the report you started January
12 9th.

13 A. The initial -- I don't have the initial. I
14 just have the supplemental.

15 * * *

16 THE COURT: Mr. Nero, you went over that
17 very precisely.

18 ATTORNEY NERO: But this one thing he
19 has January 12th and January 19th on the report, and
20 this is just something that came up. Judge, I don't
21 want to belabor the point.

22 THE COURT: You are. What's the
23 question?

24 * * *

25 BY ATTORNEY NERO:

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1 Q. What did you mean when you said the parcel
2 was not going to be sent? By whom did you mean?

3 A. The authorities in California were not going
4 to allow this package to follow the normal route
5 through UPS and arrive at its destination because they
6 hadn't made contact with any law enforcement agencies
7 on the other end to intercept or control that package
8 so that they didn't just make it through and make it to
9 the streets.

10 * * *

11 ATTORNEY SINNETT: That's all the
12 questions I have.

13 ATTORNEY NERO: Just briefly, Your
14 Honor, very, very brief.

15 * * *

16 RECROSS EXAMINATION

17 BY ATTORNEY NERO:

18 Q. Am I correct that you just stated the reason
19 for the supplemental report is if something else
20 happens after the initial report, you generate a
21 supplemental report?

22 A. Generate an initial report to put the initial
23 information, content of the investigation, and as stuff
24 occurred afterwards, any investigation, then you
25 include that stuff in a supplemental.

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1 Q. The question is if you took a report from him
2 on January 11th and then in your initial report you had
3 things that you said happened on January 12th and
4 January 19th, you don't tell us that supplemental
5 report is something generated after events that you
6 placed the initial report? *Report*

7 Do you understand my question? You could
8 have included in the initial report this information.

9 A. I understand what you are asking me, but what
10 I explained to you is it is at my discretion when I
11 write my report. *bull constitutional re frame disclosure*

12 I felt that in the way that I report my
13 initial report putting the meat of the investigation,
14 everything that occurred and information that was
15 gathered and pertaining to the mailboxes and packages
16 that were received during a period of time, I felt that
17 was important to place in the initial.

18 Then the supplemental was done to include the
19 financial end of my interview with Mr. James is the
20 reason it was done, but it is at my discretion and how
21 I organize my report and the content of my report, and
22 I chose to do it like that.

23 Q. You don't think it would be important if
24 somebody gave you a statement to keep a signed copy or
25 have him sign a copy?

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1 This is your statement, you signed it, you
2 read it. Come on.

3 A. If Mr. James was in a cooperative mode, then,
4 yeah, it would have been done.

5 Q. Wasn't cooperating?

6 A. No, he wasn't cooperating.

7 Q. I thought you said you read him his Miranda.

8 A. That doesn't mean he was being truthful and
9 cooperative.

10 * * *

11 ATTORNEY NERO: Okay. I have no further
12 questions.

13 ATTORNEY SINNETT: I have no further
14 questions.

15 THE COURT: You may step down. Members
16 of the jury, we are going to take our mid-afternoon
17 break now. We will be in recess until 3:30.

18 * * *

19 (Recess)

20 * * *

21 ATTORNEY SINNETT: Call Agent
22 Westmoreland.

23 * * *

24 BRIAN WESTMORELAND,
25 called as a witness on behalf of the Commonwealth,

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1 conduct surveillance and to participate in any arrests
2 of the Defendant, Mr. James.

3 Q. Now, were you present at the Mailboxes Etc.
4 location out on Eastern Boulevard in York?

5 A. Yes, sir, I was.

6 Q. And is that where you were conducting your
7 surveillance from?

8 A. Yes, sir.

9 Q. And with whom were you conducting
10 surveillance?

11 A. On this particular day, I was assigned with
12 Agent Morgan.

13 Q. And particularly what do you recall taking
14 place, if anything, at that Mailboxes Etc.?

15 A. Yes, sir.

16 On this particular date in question, myself
17 and Agent Morgan was parked just east of the Mailbox
18 Etc. conducting surveillance waiting for Mr. James to
19 arrive to pick up a box that contained marijuana at
20 Mailbox Etc.

21 Subsequently, Mr. James arrived. He parked
22 just west of Mailbox Etc., approximately 55 yards from
23 the Mailbox Etc. building and proceeded into Mailbox
24 Etc.

25 Within five to ten minutes, he exited; at

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1 having been duly sworn according to law,
2 testified as follows:

3 * * *

4 DIRECT EXAMINATION

5 BY ATTORNEY SINNETT:

6 Q. Sir, can you give us your full name and
7 occupation, please?

8 A. My name is Agent Brian Keith Westmoreland. I
9 work for the Pennsylvania State Attorney General's
10 Office, Bureau of Narcotics and Drug Control.

11 Q. And how long have you worked there?

12 A. Approximately 15 years, sir.

13 Q. And what specifically are your assignments in
14 that agency in that capacity?

15 A. I am a narcotics agent.

16 Q. And have you been doing that for 15 years?

17 A. Yes, sir.

18 Q. And were you employed and working in that
19 capacity back on January 10th of this year?

20 A. Yes, sir, I was.

21 Q. And specifically, were you assigned to work
22 an investigation concerning the Defendant, Mr. James?

23 A. Yes, sir, I was.

24 Q. And what was your assignment or --

25 A. My assignment on this particular date was to

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1 which time I got out the vehicle, circled around
2 towards his vehicle, and approached him.

3 As I approached him, I said, excuse me, sir,
4 can I talk to you, and I had my -- my badge on my
5 chest, and I said, I'm Agent West -- no sooner I said
6 that, he threw the box towards me, and he ran
7 southbound towards the store area.

8 Q. Now, when you say you saw him arrive and go
9 in, did you personally observe him pull in the parking
10 lot?

11 A. Yes, sir.

12 Q. And did you personally observe him walk into
13 the store?

14 A. Yes, sir, I did.

15 Q. At what point did you decide to leave the car
16 you were in to confront the Defendant?

17 A. I believe Agent Morgan gave the signal to
18 take him down.

19 Q. And did you walk by yourself to approach the
20 Defendant?

21 A. Yes. We all had specific locations we were
22 to go once he exited the store.

23 Q. And was your responsibility of your job to
24 confront him or what?

25 A. My job was to get to his vehicle and confront

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